

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of)	
WESTPHALIA TELEPHONE COMPANY for)	
authority to offer expanded local calling and to)	Case No. U-13605
adjust its rates for basic local exchange service.)	
_____)	

At the May 2, 2003 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. Laura Chappelle, Chairman
Hon. David A. Svanda, Commissioner
Hon. Robert B. Nelson, Commissioner

ORDER

On October 28, 2002, Westphalia Telephone Company (Westphalia) filed an application for authority to expand its local calling area and to increase its rates for basic local exchange service to recover the cost of expanded local calling, pursuant to Section 304 of the Michigan Telecommunications Act (MTA), MCL 484.2304. Westphalia proposed to expand its local calling area to include four adjacent exchanges, Dewitt, Fowler-Pewamo, Grand Ledge, and Portland. To compensate it for the costs of providing this expanded local calling, Westphalia proposed to increase its rates for residential basic local exchange service by \$6.27 per line per month and for business service by \$7.52 per line per month. It further proposed to charge 4¢ per minute for calls to these exchanges in excess of a monthly allowance of 400 minutes. Westphalia later increased the proposed monthly allowance to 1000 minutes per month.

On January 21, 2003, the Commission issued an order in which it stated that it could not find Westphalia's proposal to be just and reasonable because of the proposal to limit calls to significantly less than 2000 minutes per month before the customer incurs time-sensitive charges. The Commission dismissed the application without prejudice to Westphalia's ability to refine its proposals, in close consultation with its customers, with the objective of developing an application that satisfies its customers' needs without compromising the requirements of the MTA.

On February 20, 2003, Westphalia filed a petition for rehearing of the January 21, 2003 order, in which it proposes to increase to 2000 minutes per month the limit on calling to the newly included exchanges before time-sensitive charges are imposed. Although Westphalia states that the costs to provide service under the new proposal will increase over its original application, it is prepared to offer the 2000 minutes per month for the same rate that it initially proposed. It argues that its new proposal constitutes facts or circumstances arising after the Commission's order that would permit the Commission to grant rehearing and grant the application as modified.

Rule 403 of the Commission's Rules of Practice and Procedure, 1992 AACCS, R 460.17403, provides that a petition for rehearing may be based on claims of error, newly discovered evidence, facts or circumstances arising after the hearing, or unintended consequences resulting from compliance with the order. A petition for rehearing is not merely another opportunity for a party to argue a position or to express disagreement with the Commission's decision. Unless a party can show the decision to be incorrect or improper because of errors, newly discovered evidence, or unintended consequences of the decision, the Commission will not grant a rehearing.

The Commission finds that Westphalia's application does not meet the standard for granting rehearing. The only fact or circumstance arising after the Commission order is the company's new proposal, a factor that is and has been entirely within the company's control. That is not the

type of subsequent fact or circumstance that the Commission's rules permitting rehearing are intended to address. To hold otherwise might encourage a company to withhold its best offer until seeking rehearing of a Commission order that rejects its proposal.

However, the Commission finds that, in this instance, granting the application is an appropriate exception to the general rule regarding rehearing. The Commission reiterates its findings from the January 21, 2003 order that expanded local calling is generally in the public interest and "the comments in this case indicate that the Westphalia Exchange is no exception: local calling is limited in area, the community of interest surrounding the exchange supports an expansion, present restrictions compare unfavorably to the calling areas provided by nearby local exchange carriers, and at least a portion of Westphalia's customer base supports an expansion or would benefit from it." *Id.* p. 5. The only issue preventing the granting of Westphalia's original application was the limitation on the minutes available for expanded local calling. Westphalia's position that it will extend the available minutes to 2000 per line per month makes the proposal acceptable to the Commission. To require Westphalia, a small telephone company, to file a new application would delay the benefits of expanded local calling to its customers and cause additional costs to be incurred without obtaining a commensurate benefit. However, the Commission warns providers that this result should not be relied upon as precedent that will be followed in all such cases.

The Commission FINDS that:

a. Jurisdiction is pursuant to 1991 PA 179, as amended, MCL 484.2101 et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACR, R 460.17101 et seq.

b. Westphalia's application to extend its local calling area and increase its rates, as modified by Westphalia's latest filing, should be granted.

THEREFORE, IT IS ORDERED that the application filed by Westphalia Telephone Company to extend its local calling area and to increase its rates, as modified in its latest filing, is granted.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ Laura Chappelle

Chairman

(S E A L)

/s/ David A. Svanda

Commissioner

/s/ Robert B. Nelson

Commissioner

By its action of May 2, 2003.

/s/ Dorothy Wideman

Its Executive Secretary

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MICHIGAN PUBLIC SERVICE COMMISSION

Chairman

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By its action of May 2, 2003.

Its Executive Secretary

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Case No. U-13605

Suggested Minute:

“Adopt and issue order dated May 2, 2003 granting the application filed by Westphalia Telephone Company to extend its local calling area and to increase its rates, as modified in its latest filing, as set forth in the order.”